

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JOHN WILEY & SONS, INC.,

Plaintiff

**ANSWER and
AFFIRMATIVE
DEFENSES**

- against -

JOHN H. DANIEL D/B/A/ ALDRIN
ARCHITECTURE AND DESIGN,

Defendant

-----X

Defendant John H. Daniel for his Answer and Affirmative Defenses to the complaint by his attorneys, Bohmart & Sacks, P.C. alleges as follows:

1. Defendant denies knowledge or information sufficient to form a belief as to paragraphs: 3, 4, 6, 7, 8, 9, 10 and 11.
2. Defendant denies the allegations in the complaint to the following paragraphs: 1, 12, 13 and 14.
3. Defendant admits the allegations in paragraph 2.
4. Defendant admits that part of paragraph 5 alleging that he is natural person and a citizen of the State of California but denies the remainder of the allegations.

FIRST CLAIM FOR RELIEF

5. Defendant, insofar as paragraph 15 is concerned, repeats and realleges its responses to paragraphs 1- 14.

6. Defendant denies the allegations in paragraphs 16, and 18.
7. Defendant denies knowledge or information sufficient to form a belief as to paragraph 17.

SECOND CLAIM FOR RELIEF

8. Defendant, insofar as paragraph 19 is concerned, repeats and realleges its responses to paragraphs 1- 18.
9. Defendant denies knowledge or information sufficient to form a belief as to paragraph 20.
10. Defendant denies the allegations in paragraphs 21 and 23.
11. Defendant denies knowledge or information sufficient to form a belief as to paragraph 22.

THIRD CLAIM FOR RELIEF

12. Defendant, insofar as paragraph 24 is concerned, repeats and realleges its responses to paragraphs 1 – 23.
13. Defendant denies the allegations in paragraphs 25 and 26.

FOURTH CLAIM FOR RELIEF

14. Defendant, insofar as paragraph 27 is concerned, repeats and realleges its responses to paragraphs 1 – 26.
15. Defendant denies knowledge or information sufficient to form a belief as to paragraph 28, 29 and 30.

16. Defendant denies the allegations in paragraphs 31 and 33.
17. Defendant denies knowledge or information sufficient to form a belief as to paragraph 32.

FIFTH CLAIM FOR RELIEF

18. Defendant, insofar as paragraph 34 is concerned, repeats and realleges its responses to paragraphs 1- 33.
19. Defendant denies knowledge or information sufficient to form a belief as to paragraph 35.

FIRST AFFIRMATIVE DEFENSE

20. The complaint fails to state claims upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

21. Plaintiff's claims are barred by the doctrine of unclean hands

THIRD AFFIRMATIVE DEFENSE

22. Defendant, did not participate in any of the sales; however if he did, he did not knowingly or willfully sell any "counterfeit" or infringing goods.
23. Defendant, if he is an infringer, qualifies as an innocent infringer.

FOURTH AFFIRMATIVE DEFENSE

24. Upon information and belief, the CD's sold by David Daniel were purchased at an architectural convention in Las Vegas and were genuine CD's.

25. Upon information and belief, the CD's sold by defendant over the Internet were genuine.
26. Upon information and belief, based on the "first sale" doctrine as codified by section 109 (a) of the US Copyright law (17 USCA 109 (a)), as well as under trademark law, the CD's sold did not violate any laws.

Wherefore defendant demands judgment dismissing the complaint and granting reasonable attorney fees and together with the costs and disbursements of this action.

June 21, 2007

BOHMART & SACKS, P.C.

By ___s/jkb/_____
JOEL K. BOHMART (0624)
60 EAST 42 nd Street
New York, NY 10165
Telephone 212 972 – 3557
Facsimile 212 972 – 3557